

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

KELLY E. GRAY

Claimant

VS.

WILSON, LEE & GURNEY

Respondent

AND

CONTINENTAL WESTERN INS. CO.

Insurance Carrier

Docket Nos. 262,706 &
1,000,692

ORDER

Claimant requests review of a preliminary hearing Order entered by Administrative Law Judge John D. Clark on May 6, 2002.

ISSUES

The Administrative Law Judge denied claimant's preliminary hearing application for a change of the authorized treating physician. Claimant argues the medical evidence supported his request for a change of treating physician.

In the respondent's brief, it argues the Board does not have jurisdiction to review the issue raised by the claimant. In the alternative, it argues the medical evidence supports the Administrative Law Judge's determination and should be affirmed.

FINDINGS OF FACT & CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The claimant has filed two separate claims against respondent. A pre-hearing settlement conference in Docket No. 262,706 and a preliminary hearing in Docket No. 1,000,692 were combined for hearing on May 6, 2002. There was no record made of the May 6, 2002, proceeding and no additional testimony was presented. But the parties introduced medical evidence and the transcript of the January 17, 2002, preliminary

hearing held in Docket No. 1,000,692 was included as part of the evidentiary record for the May 6, 2002, proceeding.

After this combined summary proceeding, the Administrative Law Judge issued an Order dated May 6, 2002, denying claimant's request for a change of authorized treating physician. The Order only referenced Docket No. 262,706.

It appears from the arguments in the briefs, that claimant's request for a change of authorized treating physician was applicable to both docketed claims. Moreover, for the purpose of determining claimant's request for a change of authorized treating physician, the parties and the Administrative Law Judge considered the facts in both docketed claims at the May 6, 2002, proceeding. Because the parties treated the dockets as consolidated for purposes of the May 6, 2002, preliminary hearing and because Docket No. 1,000,692 was the case scheduled for preliminary hearing on May 6, 2002, the Judge's Order should have included Docket No. 1,000,692.

The only issue raised before the Administrative Law Judge was claimant's request to change the authorized treating physician. This is an appeal from Administrative Law Judge John Clark's denial of claimant's request for a change of treating physician.

The Board agrees with the respondent and concludes, at this juncture of the proceeding, it does not have jurisdiction to review this preliminary hearing order.

The Board's jurisdiction to review preliminary hearing issues and findings is generally limited to the following:¹

- (1) Did the worker sustain an accidental injury?
- (2) Did the injury arise out of and in the course of employment?
- (3) Did the worker provide timely notice and timely written claim?
- (4) Is there any defense to the compensability of the claim?

Additionally, the Board may review any preliminary hearing order where a judge exceeds his or her jurisdiction.² Jurisdiction is generally defined as authority to make inquiry and decision regarding a particular matter. The jurisdiction and authority of a court to enter upon inquiry and make a decision is not limited to deciding a case rightly but

¹K.S.A. 44-534a.

²K.S.A. 44-551.

includes the power to decide it wrongly. The test of jurisdiction is not a correct decision but the right to enter upon inquiry and make a decision.³

The Board has on other occasions determined that a request to change the authorized treating physician is the furnishing of medical treatment. The preliminary hearing statute found at K.S.A. 44-534a gives the Administrative Law Judge authority to grant or deny the request for medical compensation pending a full hearing on the claim. Thus, the Administrative Law Judge did not exceed his jurisdiction and the Board does not have jurisdiction to review the Judge's preliminary Order.

As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim.⁴

AWARD

WHEREFORE, it is the finding, decision, and order of the Board that the claimant's appeal is dismissed and Administrative Law Judge John D. Clark's Order dated May 6, 2002, remains in full force and effect.

IT IS SO ORDERED.

Dated this _____ day of June 2002.

BOARD MEMBER

c: Kevin T. Stamper, Attorney for Claimant
Nathan Burghart, Attorney for Respondent
John D. Clark, Administrative Law Judge
Philip S. Harness, Workers Compensation Director

³See Taber v. Taber, 213 Kan. 453, 516 P.2d 987 (1973); Provance v. Shawnee Mission U.S.D. No. 512, 235 Kan. 927, 683, P.2d 902 (1984).

⁴K.S.A. 44-534a(a)(2).